

REMARKS

Claims 1-30 are pending in the application. Claims 1, 11, 18, 21, and 27 are independent. By the foregoing Amendment, claims 1, 11, 18, 21, and 27 have been amended. The Specification also has been amended. These changes are believed to introduce no new matter and their entry is respectfully requested.

Rejection of Claims 27-30 Under 35 U.S.C. §101

In the Office Action, the Examiner rejected claims 27-30 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Although Applicants believe claims 27-30 to be patentable as written, in the present paper, Applicants have amended the Specification to accommodate the Examiner. Accordingly, Applicants respectfully request that the Examiner reconsider and remove the rejection to claims 27-30.

Rejection of Claims 1-30 Under 35 U.S.C. §102(e)

In the Office Action, the Examiner rejected claims 1-30 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2003/0198236 to Denton et al. (hereinafter “*Denton*”). Applicants respectfully traverse the rejection.

A claim is anticipated only if each and every element of the claim is found, either expressly or inherently, in a reference. (MPEP §2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987)). The identical invention must be shown in as complete detail as is contained in the claim. *Id. citing Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989)). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Independent claim 1 recites in pertinent part “periodically capturing data from a tunable optical device during operation of the tunable optical device, ***the captured data being associated with operational parameters of the tunable optical device***; and ***streaming the data*** from the tunable optical device” (emphasis added). Independent claims 11, 18, 21, and 27 have been amended similarly.

In the Office Action, the Examiner states with regard to claim 1 that *Denton* discloses a method comprising periodically capturing data from a tunable optical device during operation of the tunable optical device (citing monitoring function 426 as capturing operational data from optical components and described in ¶ [0052] of *Denton*); and streaming the data from the tunable optical device (citing “SONET stream data” described in ¶¶ [0030] and [0034] of *Denton*). Applicants respectfully disagree.

Applicants respectfully submit that further that *Denton* fails to disclose “the captured data being associated with operational parameters of the tunable optical device; and streaming the data from the tunable optical device” as recited in the claims. The only streaming in *Denton* is SONET streaming. SONET streaming only concerns ingress and egress data. SONET streaming does not refer to data captured associated with operational parameters of a tunable optical device. *Denton* is very specific that all monitoring function 426 of *Denton* appears to be monitoring is “a number of aspects of the supported protocols, including retrieving and reporting on the current values of selected ones of the monitoring metrics.... [T]he monitoring actions and metrics supported include start monitoring on the various operational metrics of the various protocols, the interfaces and the processing units. For examples, for SONET flows, the monitoring actions and metrics may include various operational metrics of the section, line and path conditions and alarms, including B1, B2 and B3 errors, APS, AIF, REI, RDI, SEF, SIF, SOP, LOP and LOS and others (see SONET specification for the precise meaning of these mnemonics.

For Packet over SONET flows, the monitoring actions and metrics may include monitoring and reporting of RMON packet size and error statistics derived from Ethernet, as well as PPP/HDLN protocol-specific features such as detected address, control, and protocol fields. For 10Gbase-LR and 10Gbase-LW, the monitoring actions and metrics may include mapping of the various relevant RMON parameters specified by the standard, such as counters for multicast packets retrieved, broadcast packets received, frames transmitted OK, frames received OK, frame length errors, FCS errors, packet length histogram, packets sent/received, packet bytes sent/received, and so forth.” (See ¶ [0052] of *Denton*.)

Applicants respectfully note that nothing in this description of what monitoring function 426 does includes capturing data being associated with operational parameters of the tunable optical device and streaming the data from the tunable optical device, as recited in the claims. Applicants therefore respectfully submit that because this feature is missing from Denton, Denton fails to disclose the identical invention as recited in the claims. Accordingly, Applicant respectfully submits that claims 1, 11, 18, 21, and 27 are patentable over *Denton*.

Claims 2-10, 12-17, 19-20, 22-26, and 28-30 properly depend from claims 1, 11, 18, 21, and 27, respectively, and are thus patentable for at least the same reasons that claims 1, 11, 18, 21, and 27 are patentable. (MPEP §2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988))). Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 1-30.

CONCLUSION

Applicants respectfully submit that all grounds for rejection have been properly traversed, accommodated, or rendered moot and that the application is now in condition for allowance. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

/December 4, 2008/
Date

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(206) 292-8600

/Jan Little-Washington/
Jan Little-Washington
Reg. No. 41,181

CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Kristy A. Marvel/ December 4, 2008
Kristy A. Marvel *Date*